

Appendix XVIII

FAQs: Environmental Procedures

Note: This document addresses a number of general, frequently asked questions concerning environmental reviews and public-private alliances. It in no way supplants the need to carefully review Title 22 of the Code of Federal Regulations, Part 216 (USAID Environmental Procedures or 22 CFR 216) or to consult with your Mission Environmental Officer (MEO) and/or Regional Environmental Officer (REO) in conjunction with your Bureau Environmental Officer (BEO).

1. Do USAID-financed programs and activities under public-private alliances need to comply with USAID's Environmental Procedures set forth at 22 CFR 216?

Yes. 22 CFR 216 requires some level of review for all USAID authorized or approved (i.e. USAID-financed) programs and activities to determine what environmental impacts, if any, they will have. The level of review depends upon the proposed program or activity. This means, for example, that one activity may be subject to a full environment review under 22 CFR 216, while another activity may be exempt or excluded from such a requirement. See Question 6, below, for a general overview of the environmental review process and Question 4 for information about Categorical Exclusions and Exemptions.

2. Is USAID responsible for conducting an environmental review under 22 CFR 216 for its private sector partner's activities in an alliance?

Only if the partner is receiving USAID funds for the activity through a USAID-funded mechanism, such as a contract, grant, or cooperative agreement. See Question 5, below, for more information.

3. Where do I find information about USAID's environmental review requirements?

22 CFR 216 sets forth the general procedures to be used by USAID to ensure that environmental factors and values are integrated into USAID's decision-making process. It is available on-line at:

<http://www.usaid.gov/our_work/environment/compliance/index.html>
<http://www.access.gpo.gov/nara/cfr/waisidx_01/22cfr216_01.html>

Chapter 204 (Environmental Procedures) of the Automated Directive System (ADS) sets forth the policy and essential procedures about how to apply 22 CFR 216 to the USAID assistance process in order to ensure that assessments of the environmental consequences of all programs, activities, and substantive amendments thereto, are in full accordance with the requirements of 22 CFR 216. ADS 204 is available on-line at <<http://www.usaid.gov/policy/ads/200/204.pdf>>

4. What USAID activities are subject to environmental review under 22 CFR 216?

As noted in Question 1, all USAID-financed programs and activities require some level of review under 22 CFR 216. This includes all new projects, programs or

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activities and substantive amendments or extensions of ongoing projects, programs, or activities, including those implemented as part of public-private alliances.

USAID staff should consult with their MEO, REO, or BEO for specific guidance on conducting an environmental review of a USAID-funded program or activity - including those implemented through GDAs - and for guidance on the conditions under which an Exemption (22 CFR 216.2(b)) or Categorical Exclusion (22 CFR 216.2(c)(2)) from the environmental review requirements of 22 CFR 216 applies.

5. How does 22 CFR 216 apply to public-private alliances where USAID is playing a small role in a larger alliance?

It is the structure of an alliance, not the size of USAID's role in it, which determines whether 22 CFR 216 applies to USAID-funded programs and activities under an alliance. To reiterate, absent a Categorical Exclusion or Exemption, 22 CFR 216's environmental review requirements apply to all USAID-financed programs or activities, regardless of size. To the extent that an alliance involves programs and activities that are not funded by USAID (i.e. straight parallel financing), 22 CFR 216 would not apply to activities financed separately by alliance partners utilizing their own funding mechanisms.

The Global Development Alliance (GDA) document "Tools for Alliance Builders" (available at <http://www.usaid.gov/gda>) discusses a number of approaches to establishing alliances, which can be placed in two broad categories (see "Tools for Alliance Builders" for a more detailed description):

Parallel Financing: Under this approach, USAID and alliance partners reach agreement on how to work together to address a development problem, with each partner establishing a separate mechanism (e.g., grant, contract) through which to provide resources to support the alliance's work (financial or in-kind). USAID-funded programs and activities under the alliance are subject to environmental review under 22 CFR 216, absent an exemption or exclusion, discussed above. To the extent that an alliance involves programs and activities that are not funded by USAID, 22 CFR 216 would not apply to activities financed separately by alliance partners utilizing their own funding mechanisms.

Pooled Resources: Under this approach, USAID and alliance partners establish a formal alliance governance structure for the purpose of attracting resources and making joint program decisions. These alliances may involve fairly complex organizational structures and legal documentation. For this type of alliance, USAID support typically takes the form of a grant to a non-governmental organization (NGO) established by the alliance or to a public international organization (PIO) or other financial institution that serves as trustee for the alliance's resources. Where USAID resources are utilized under such structures, programs and activities are subject to environmental review under 22 CFR 216. The level of review, as discussed above, depends on the proposed program or activity.

In all cases, remember that, as part of the due diligence investigation of a potential alliance partner, it is essential to investigate what is often called the "triple bottom line"—i.e., is the prospective partner socially responsible, **environmentally accountable** and financially sound. For purposes of this discussion, this means

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that, while the 22 CFR 216 environmental review procedures may not be applicable to a program or activity implemented under an alliance, USAID should still be concerned about a proposed alliance partner's past record of environmental accountability and its specific plans for environmental accountability under the alliance. As outlined in the Tools for Alliance Builders "Preconditions for Success: An Alliance Checklist" "[i]t is critical that USAID align itself with private sector entities whose interests are compatible with USAID's and whose business practices do not pose reputation risks for the alliance or for USAID. Look for 'evidence' that the proposed partners' operational practices incorporate, for instance, commitment to human rights, decent work conditions, **environmental protection**, and community involvement."

6. What does the environmental review under 22 CFR 216 entail?

This question is best addressed by reviewing 22 CFR 216 and ADS 204 and conferring with your MEO, REO or BEO. As a general matter, however, depending on the nature of the project or activity, 22 CFR 216 will require the preparation of an Initial Environmental Examination (IEE) or request for Categorical Exclusion. Some will also require an Environmental Assessment (EA) and it would be uncommon but possible that one could require an Environmental Impact Statement (EIS).

Here, a few definitions are helpful. 22 CFR 216 defines the following terms as follows:

IEE: The first review of the reasonably foreseeable effects of a proposed action on the environment. Its function is to provide a brief statement of the factual basis for a Threshold Determination as to whether an EA or an EIS will be required.

Threshold Determination: The formal Agency decision which determines, based on the IEE, whether a proposed Agency action is a major action significantly affecting the environment.

EA: A detailed study of the reasonably foreseeable significant effects, both beneficial and adverse, of a proposed action on the environment of a foreign country or countries.

EIS: A detailed study of the reasonably foreseeable environmental impacts, positive and negative, of a proposed USAID action and its reasonable alternatives on the territory of the United States, the global commons (high seas) or areas outside the jurisdiction of any nation. See 22 CFR 216.7 for the specific requirements for preparing EISs.

There are generally two primary steps in the environmental review process:

Step 1: IEE, defined above. An IEE is not required for activities to which an Exemption or Categorical Exclusion under 22 CFR 216 applies. Additionally, no IEE is required for activities included in the 22 CFR 216 class of actions normally identified as having significant effects on the environment – these activities require an immediate EA or EIS, as appropriate. See 22 CFR 216.2(d).

The originator of the action, normally the Mission, is responsible for preparation of the IEE or request for Categorical Exclusion, which is then submitted by the Mission Director to the BEO for review and written concurrence.

IEEs record Threshold Decisions such as Positive Threshold Decisions for proposed actions determined to have a potentially significant effect on the environment and Negative Determinations if the proposed action will not have a potentially significant effect on the environment.

Step 2: If the IEE includes a Positive Threshold Decision, then a Scoping Exercise is undertaken by the Mission with the host government and affected public to determine the focus and scope of work for the needed EA or EIS, as appropriate. The results of the Scoping Exercise must be approved in writing by the BEO prior to beginning the EA or EIS.

7. Our mission is providing technical assistance only to an alliance; does 22 CFR 216 still apply?

Yes. However, when the provision of technical assistance does not include activities that directly affect the environment, 22 CFR 216 includes a procedure for obtaining a Categorical Exclusion from further environmental review. But, any requests for application of this or any other Categorical Exclusion must be made in writing and include appropriate justification. The decision regarding the application of a Categorical Exclusion must be reviewed and approved, in writing, by the BEO.

8. I'm working on an alliance and am concerned that the amount of time and level of review required under 22 CFR 216 may scare away potential partners.

Of course, USAID does not want to deter potential partners from engaging with us. In many cases, if the alliance is planned appropriately, this should not be a concern. If potential partners have questions about our 22 CFR 216 process, please address their questions in coordination with the MEO, REO, or BEO.

Keep in mind that appropriate alliance partners should not be scared away by the 22 CFR 216 review process as they themselves should both understand and demonstrate environmental accountability in their works. As noted in Question 5, above, environmental accountability is a core element of the due diligence review of potential alliance partners. USAID staff should not seek to develop alliances with partners who are not environmental accountable, which may include those who seek to avoid environmental review of their activities.

9. We need to obligate USAID funds for our GDA quickly and do not have time to conduct an environmental review. Is it possible to complete the review later?

Twenty-two CFR 216 provides that IEEs should be prepared at the Project Identification Document (PID) or Program Assistance Initial Proposal (PAIP) stage. (Note that concept papers and activity approval documents (AADs) have replaced PIDs and PAIPs. See ADS 200 Series.) Additionally, ADS E204.5.4 provides that each Operating Unit and SO Team shall develop effective essential procedures which ensure that adequate time and resources are available to complete all environmental work required under 22 CFR 216 before funds are obligated (this environmental work includes IEEs, Categorical Exclusions, requests for Deferrals or Exemptions of environmental reviews and if appropriate, Scoping Statements and their related EAs or EISs).

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The GDA Toolkit also specifies that, during the planning stages of a potential alliance, the normal list of statutory, regulatory and policy requirements that apply to USAID-funded activities should be reviewed. This includes 22 CFR 216 which is undertaken as an integral and concurrent part of a project's design.

Thus, the situation described in this question can and should be avoided.

Twenty-two CFR 216 recognizes that environmental review of all programs or activities may not be possible at the time of program or activity approval, before obligation. See CFR 216.7 for an overview of the stringent requirements that apply to environmental reviews after authorization of financing. Also, consult with your MEO, REO, or BEO for specific guidance on what to do when you expect that an IEE is not going to be completed within the specified timelines. See also 22 CFR 216.3(a)(1).

10. Are there other environmental laws or regulations that apply to USAID activities?

Generally, yes, but their applicability depends on the activity type. For example, Section 119 of the Foreign Assistance Act of 1961, as amended (FAA) includes provisions related to endangered species, including actions required by USAID. Section 118 of the FAA includes provisions related to tropical forests. Note that these laws do not supplant the 22 CFR 216 environmental review requirements.

Please consult with GC or your RLA for advice and guidance on specific legal questions, and your MEO, REO, or BEO on all other matters.

11. United States firms are generally familiar with the National Environmental Policy Act (NEPA). Is there any difference between NEPA and USAID's Environmental Procedures?

Yes. NEPA is a U.S. law that sets forth the requirements for environmental review of U.S. government actions undertaken within the United States. Most USAID programs and activities, on the other hand, take place outside of the United States. USAID's Environmental Procedures are consistent with the purposes of NEPA, and are intended to implement the requirements of NEPA as they affect USAID programs.

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